



NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Cases: 70757
70758
10 June 2013

MuckRock News
ATTN: Mr. Michael Morisy
DEPT MR 5720 and 5719
PO Box 55819
Boston, MA 02205-5819

Dear Mr. Morisy:

This is an initial response to your two Freedom of Information Act (FOIA) requests dated 24 May 2013 that were received by this office on 24 May 2013. Your requests have been assigned the following Case Numbers and item numbers for ease of reference:

- **70757:** 1.) "A copy of the source for the NSA's set of games entitled 'NSA CryptoChallenge' for both Android and Apple iOS. With copyright noted as belonging to the NSA," and;

2.) "Also request copies of the outside development contracts for writing these software, if any. These pieces of software may have been developed by CACI-CMS Information Systems, Inc."
- **70758:** 3.) "A copy of the source for the NSA's set of software entitled 'NSA Career Links 2' for both Android and Apple iOS. With copyright noted as belonging to the NSA," and;

4.) "Also request copies of the outside development contracts for writing these software, if any. These pieces of software may have been developed by CACI-CMS Information Systems, Inc."

Since both of your FOIA requests are similar in nature, we have aggregated them into a single response to address the administrative details of your requests. However, to allow us to respond more expeditiously, we will individually process each request for releasability and respond separately as they are completed. Your request for, and search and review of, information concerning the above-noted contract information

is expected to be extensive and would require an elaborate search. The complexity of the search constitutes an exceptional circumstance and precludes our responding to you within 20 working days of our receipt of your request.

Regarding Items 1 and 3, we are uncertain of the records you seek, however, because we do not understand what you mean by the word “source” in both of your requests. Department of Defense (DoD) Regulation 5400.7-R states that the requester must provide a description of the desired records so that the Government is able to locate the records with a reasonable amount of effort. More detail is required for us to determine the appropriate files to search to find the material you request. In accordance with the DoD regulation, processing this part of your requests is being held in abeyance pending a response from you, within 30 days of the date of this letter, clarifying your requests. If we do not hear from you within that time, we will assume that you are no longer interested in pursuing this portion, and we will not address Items 1 and 3.

I have considered your request to be classified as “a representative of the news media” and determined that it should be denied. The FOIA, at 5 U.S.C. 552 (a)(4)(A)(ii), sets three standards that must be met for a requester to qualify as a representative of the news media:

1. Requester must be a person or entity that gathers information of potential interest (news) to a segment of the public. The FOIA defines ‘news’ as information that is about current events or that would be of current interest to the public.
2. Requester must use its editorial skills to turn the raw materials into a distinct work.
3. Requester must distribute that work to an audience.

I have determined that you do not meet standards 1 and 2, as listed above. The first criterion that must be met to be considered a representative of the news media is that the requester gathers the information in the public interest. Representatives of the news media normally are organized to seek out and gather information generated by public interest, not information generated by internal interests the individuals or organizations may have. This is what qualifies these individuals or organizations to be considered as members of the news media. To meet the second criterion, a requester must use its editorial skills to turn raw material into a distinct work. You have offered no

information with regard to your intended use of any materials that might be released as a result of this FOIA request.

With regard to your request for a fee waiver, there is a two-pronged test a requester must satisfy to qualify for a fee waiver. First, the requested information must be in the public interest. Second, the request must not be primarily in the requester's commercial interest. The following six factors further define the two-pronged waiver test, and a requester must meet the first four factors to qualify under the public interest prong:

1. The subject of the request must concern the "operations and activities of the government."
2. The disclosure of information is "likely to contribute to an understanding of government operations and activities."
3. The disclosure of the requested information will "contribute to public understanding."
4. The disclosure is likely to contribute "significantly" to public understanding of government operations and activities.
5. The requester has a commercial interest that would be furthered by the requested disclosure.
6. Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, thereby rendering the disclosure "primarily in the commercial interest of the requester."

In analyzing these criteria, I have determined that you do not meet three of these factors. You have not provided evidence to sufficiently meet factor 1 regarding how this information concerns the functions and activities of the National Security Agency. The National Security Agency/Central Security Service (NSA/CSS) is the nation's cryptologic organization, and we have a twofold mission. Our Information Assurance mission is to provide solutions, products, and services to protect U.S. information infrastructures critical to national security interests. In response to requirements set at the highest levels of government, our Signals Intelligence mission is to collect, process, and disseminate intelligence information from foreign signals for national foreign intelligence and counterintelligence purposes and to support military operations. You

also have not provided evidence to sufficiently meet factor 3 regarding how the information will “contribute to public understanding.” This factor generally means that the requester can disseminate the information to the general public. In your request, you state that the data collected will be posted to MuckRock.com. You do not demonstrate with particularity that the information will be communicated to the public. You do not describe specifically your qualifications, the nature of your research, and the purpose for which you intend to use the requested information. Specialized knowledge may be required to extract, synthesize, and effectively convey the information to the public. You do not provide evidence of past analysis on this subject matter nor any evidence of past use of materials gained through FOIA requests. Furthermore, you do not provide an indication of your ability to understand and process the information such that the public will be able to interpret your analysis of the records.

Therefore, for the reasons described above, you also do not meet factor 4. You have not shown how this information will “significantly” contribute to public understanding of government operations or activities. To warrant a waiver, the public’s understanding of the information, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. Moreover, without demonstration of an expertise in the subject area, an ability to disseminate the information, and an ability to increase the public’s understanding in a meaningful way, a “significant” contribution to public understanding is not likely.

After reviewing your request, I have determined that you do not meet the standards of factors 1, 3, and 4 of the public interest prong. You do not qualify for a fee waiver because you have not satisfied the public interest requirement of the FOIA.

The Initial Denial Authority for NSA is the Associate Director for Policy and Records, David J. Sherman. If you disagree with the decision regarding your fee category or the fee waiver, you may file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal must be postmarked no later than 60 calendar days after the date of the adverse determination. The appeal shall be in writing addressed to the NSA/CSS FOIA Appeal Authority (DJ4), National Security Agency, 9800 Savage Road STE 6248, Fort George G. Meade, MD 20755-6248. The appeal shall reference your fee category or the fee waiver and shall contain, in sufficient detail and particularity, the grounds upon which you believe the adverse determinations are unwarranted. The NSA/CSS FOIA Appeal Authority will

endeavor to respond to the appeal within 20 working days after receipt, absent any unusual circumstances.

Since you do not qualify for media status, you have been placed in the "all other" fee category. As such, you are allowed 2 hours of search and the duplication of 100 pages at no cost. Since both cases are similar in nature, assessable fees for each case will be aggregated together. Duplication fees are computed in accordance with DoD Regulation 5400.7-R and are assessed at \$.15 per page. Search fees are calculated at \$44.00 per hour. Until the processing of your requests is complete, we are unable to determine the exact number of releasable pages. We are unable to complete the estimate for the search for responsive material until you provide the clarification on two parts of your request, as noted above. Should we determine that search fees are assessable beyond your 2 free hours, you will be notified with an estimate of the cost. All assessable fees accumulated will be due when the processing of both cases has been completed.

Correspondence related to your requests should include the case numbers assigned to your requests, which are included in the first paragraph of this letter. Your letter should be addressed to National Security Agency, FOIA Office (DJ4), 9800 Savage Road STE 6248, Ft. George G. Meade, MD 20755-6248 or may be sent by facsimile to 443-479-3612. If sent by fax, it should be marked for the attention of the FOIA office. The telephone number of the FOIA Office is 301-688-6527.

Sincerely,

A handwritten signature in dark ink, appearing to read "Pamela N. Phillips", written in a cursive style.

PAMELA N. PHILLIPS
Chief
FOIA/PA Office